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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,862	01/21/2005	Paulus Cornelis Neervoort	NL 020772	1298
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EXAMINER				
HOEL, MATTHEW D				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/521,862

Applicant(s)

NEERVOORT ET AL.

Examiner

Matthew D. Hoel

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06/26/2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102/103

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
2. Claims 1 to 14 are rejected under 35 U.S.C. 102(a) as being anticipated by Cordero, et al. (WIPO publication WO 01/65358 A2, application PCT/US01/05478, entered as FPL 02-21-2006) or, in the alternative, under 35 U.S.C. 103(a) as obvious over '358 in view of Kagan, et al. (U.S. patent 5,618,045 A).

3. As to Claims 1, 5, and 6: A method of performing a competition between teams by means of at least two sets of modular units, the method comprising the steps of ('358, Abst., each set including at least one modular unit as claimed below; teams of groups of players (group player statistics), Page 20, Lines 9 to 11; team sports cited, Page 7, Lines 9 to 13):

- connecting a first set of modular units to a second set of modular units, wherein each set comprises at least one modular unit ('358, Abst.; tournament play between and among client computers, Page 20, Lines 4 to 8);
- determining which first modular unit in the first set is connected to which second modular unit or units in the first set (client-to-client play, Page 10, Lines 12-15, Fig. 1F-G);
- determining which third modular unit in the second set is connected to which fourth modular unit or units in the second set (client-to-client play, Page 10, Lines 12-15, Fig. 1F-G);
- determining for a set of information items at least one modular unit, wherein each information item individually relates to a specific modular unit in said sets; and wherein said set of information items represents competition-related information, and wherein said set of information items depends on the way in which said modular units are located relative to one another (one criterion being least latency which is determined at least in part by how far clients are away from each other, Page 19, Lines 16 to 19), and/or a property for each modular unit (device IDs retrieved to start a session, Page 34, Lines 13 to 19; device type, Page 34, Line 23 to Page 35, Line 2) and/or which first

competition is performed (due to the and/or language, the examiner is interpreting this as a Markush claim with only one of these elements required);

- distributing the set of information items to the corresponding

modular units (Claims 7 to 10 of '358, multiple channels in a multiplayer game); and

- presenting said set of information items on the modular units (Claims 7 to 10 of '358, multiple channels in a multiplayer game). Alternatively, Cordero in '358 lacks in disclosing how the units are located relative to one another in a spatial sense which the applicants seem to intend. This limitation is, however, taught in Kagan ('045) in which several portable gaming devices are located in close proximity for wireless play in an ad-hoc network (Abst., Figs. 1 & 3, 3:40-52, 5:15-30). The wireless ad-hoc game can be a competitive sports or other competitive game (3:66-4:6); the wireless ad-hoc devices are all displayed corresponding to respective players in the game (4:-43-51). It would have to one of ordinary skill in the art to apply the spatial arrangement of '045 to the gaming system outlined in Cordero ('358). '358 discloses the wireless devices used in the game being laptops, cellular devices, personal digital assistants (3:12-18, 9:22-10:2), and that the network may also be wireless (12:10-13, 13:1-4) and peer-to-peer (11:3-9), analogous to the wireless ad-hoc network of '045. The game of '358 is also a competitive, multi-player game (7:14-8:2), much like '045 as outlined above. '358 is specifically designed to provide cross-platform play for different types of devices (8:3-19). This modification would thus have the advantage of allowing ad-hoc wireless game play between wireless devices of different types.

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3. As to Claim 2: A method as claimed in claim 1, characterized in that the method further comprises the step of:

- receiving a first information item representing a property of a modular unit (device IDs retrieved to start a session, Page 34, Lines 13 to 19; device type, Page 34, Line 23 to Page 35, Line 2).

4. As to Claim 3: A method according to claim 1, characterized in that the method further comprises the step of:

- receiving a second information item representing a second competition (player can select from among plural games, 8:5-8; also tournaments, 11:14-15, which involve several rounds of play).

5. As to Claim 4: A method according to claim 1, characterized in that the method further comprises the steps of:

- disconnecting a third set of modular units from the first and second set of modular units, wherein said third set comprises at least one modular unit; or
- connecting a fourth set of modular units to said first and second set of modular units, wherein said fourth set comprises at least one modular unit (in the tournament embodiment of '358 outlined above regarding Claim 1, the system will necessarily have to connect and disconnect players, as losing players are disconnected and winning players are matched together for the next round of play).

6. As to Claim 7: A modular unit for performing a competition between teams by means of at least two sets of modular units ('358, Abst., each set including at least one modular unit as claimed below; teams of groups of players (group player statistics),

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Page 20, Lines 9 to 11; team sports cited, Page 7, Lines 9 to 13), said modular unit comprising:

- means for connecting a first set of modular units to a second set of modular units, wherein each set comprises at least one modular unit('358, Abst.; tournament play between and among client computers, Page 20, Lines 4 to 8) ;
- means for determining which modular unit is connected to which second modular unit or units in the first and the second set (client-to-client play, Page 10, Lines 12-15, Fig. 1F-G);
- means for determining a set of information items, wherein each information item individually relates to a specific modular unit in said sets; and wherein said set of information items represents competition-related information, and wherein said set of information items depends on the way in which said modular units are located relative to one another in said sets (one criterion being least latency which is determined at least in part by how far clients are away from each other, Page 19, Lines 16 to 19), and/or a property for each modular unit (device IDs retrieved to start a session, Page 34, Lines 13 to 19; device type, Page 34, Line 23 to Page 35, Line 2) and/or which first competition is performed (due to the and/or language, the examiner is interpreting this as a Markush claim with only one of these elements required) and/or which first competition is performed;
- means for distributing the set of information items to the corresponding modular units in said sets; and
- means for presenting one of said information items.

7. As to Claim 8: A modular unit as claimed in claim 7, characterized in that the modular unit further comprises:
- means for receiving a first information item representing a property of a modulator unit (device IDs retrieved to start a session, Page 34, Lines 13 to 19; device type, Page 34, Line 23 to Page 35, Line 2).
8. As to Claim 9: A modular unit according to claim 7, characterized in that the modular unit further comprises: means for receiving a second information item representing a second competition (player can select from among plural games, 8:5-8; also tournaments, 11:14-15, which involve several rounds of play).
9. As to Claims 10, 12, 14, and 16: '358 teaches an item of information comprising the location of the gaming unit in order to match that unit with the nearest server geographically (16:11-17:6).
10. As to Claims 11, 13, 15, and 17: '358 teaches an item of information comprising a first competition performed as the matchmaker server matches players with available games (18:1-17).

Claim Rejections - 35 USC § 101

11. The previous 101 rejections of Claims 5 and 6 are withdrawn as they have been properly amended.

Oath/Declaration

12. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:
It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

The oath cites "material to the examination of" instead of "material to the patentability of". Appropriate correction is required. The examiner notes that the applicants stated they are getting a new oath, so the objection stands for the time being.

Response to Arguments

13. Applicant's arguments with respect to claims 1 to 14 have been considered but are moot in view of the new ground(s) of rejection. The examiner believes the latency interpretation by the examiner in the 102 was fair because '358 (13:6-13) discusses connecting the gaming device to the geographically closest server (also 16:11-17:6). This corresponds to the latency matching discussed in the rejection of Claim 1. Alternatively, Cordero in '358 lacks in disclosing how the units are located relative to one another in a spatial sense which the applicants seem to intend. This limitation is, however, taught in Kagan ('045) in which several portable gaming devices are located in close proximity for wireless play in an ad-hoc network (Abst., Figs. 1 & 3, 3:40-52, 5:15-30). The wireless ad-hoc game can be a competitive sports or other competitive game (3:66-4:6); the wireless ad-hoc devices are all displayed corresponding to respective

players in the game (4:-43-51). It would have to one of ordinary skill in the art to apply the spatial arrangement of '045 to the gaming system outlined in Cordero ('358). '358 discloses the wireless devices used in the game being laptops, cellular devices, personal digital assistants (3:12-18, 9:22-10:2), and that the network may also be wireless (12:10-13, 13:1-4) and peer-to-peer (11:3-9), analogous to the wireless ad-hoc network of '045. The game of '358 is also a competitive, multi-player game (7:14-8:2), much like '045 as outlined above. '358 is specifically designed to provide cross-platform play for different types of devices (8:3-19). This modification would thus have the advantage of allowing ad-hoc wireless game play between wireless devices of different types. Fig. 1G (11:3-9) of '358 corresponds to the mixed server and peer-to-peer embodiment of Fig. 3 (15-30) of '045 in which the game takes place primarily peer-to-peer between clients and the server or game station essentially referees the game. The previous 101 rejections are withdrawn as the claims have been properly amended. The examiner respectfully disagrees with the applicants as to the claims' condition for allowance.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. patents 7,179,171 B2; 5,966,526 A; 6,540,606 B1; 6,659,860 B1; 6,811,487 B2; 7,233,988 B2; and 7,371,177 B2 teach modular games. U.S. patents 7,184,718 B2; 5,691,885 A; 6,795,318 B2; and 6,687,128 B2 teach modular computing devices.

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15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Hoel whose telephone number is (571) 272-5961. The examiner can normally be reached on Mon. to Fri., 8:00 A.M. to 4:30 P.M.

16. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/M. D. H./
Examiner, Art Unit 3714